

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,

GERALD L. PICCIRILLI,
Bar No. 010093

Respondent.

PDJ 2019-9069

**ORDER OF INTERIM
SUSPENSION**

[State Bar No. 19-1482]

FILED OCTOBER 7, 2019

Overview

Under Rule 61(a) Ariz. R. Sup. Ct., an interim suspension may be entered upon a showing of probable cause that an attorney is engaging in conduct that has caused immediate and substantial harm to clients, the public, or the administration of justice. Rule 61(c)(1) applies to the grounds of interim suspension based upon a criminal conviction. There is no allegation of a conviction of a crime in this proceeding. Rule 61(c)(2) applies to all other grounds for interim suspension.

The burden to prove probable cause is upon the State Bar. Pursuant to Rule 61(c)(2)(B), after receiving the response from a respondent, the presiding disciplinary judge (“PDJ”) “may rule on the motion or order an evidentiary hearing.” Central to the analysis of interim suspension is the determination of probable cause.

“Probable cause” is most often discussed in criminal cases. “Probable cause exists if an individual has a reasonable belief that a crime has been committed and

that the defendant committed that crime.” *State ex rel. Collins v. Superior Court In & For Maricopa Cty.*, 132 Ariz. 479 (1982). Probable cause to arrest exists if the arresting officer possesses “reasonably trustworthy information sufficient to lead a reasonable person to believe that an offense has been committed and that the person to be arrested committed it.” *State v. Dixon*, 153 Ariz. 151, 153 (1987).

However, these proceedings are neither criminal nor civil but rather *sui generis* or unique to themselves. Rule 48(a). Probable cause in interim suspension proceedings exists when there is a reasonable belief that an ethical rule has been violated and that the respondent has violated that rule. Whether interim suspension should be entered requires the analysis of the ABA *Standards for Imposing Lawyer Sanctions* (“Standards”) and the consideration of whether interim probation in lieu of interim suspension should be entered under Rule 61(c)(2)(C).

Analysis

The motion for interim suspension is supported by the affidavit of Jaime Sochor and various written responses and bank records. In his response, Respondent offers mitigation, but substantially admits to these facts. These admitted facts support include that Respondent has misappropriated approximately \$5,371.00 in client funds.

The facts arise out of Respondent substituting as counsel of record in the representation of a client in a personal injury case. Through arbitration client was

awarded damages of \$19,427.09. Dr. Robert Watson had a recorded lien against that client. Respondent told the doctor that his check was mailed to him in December 2018.

Respondent attributed his failure to deliver the check in a response to Dr. Watson by explaining that he had received a mail return and forgotten to resend the check due to his failure to perform a three-way reconciliation. If true, this would not warrant interim suspension. However, this explanation was untrue.

The State Bar Trust Account Examiner requested various trust account records from Respondent. After receiving two extensions, Respondent responded in writing admitting that there was a delay in the disbursement of funds due to various factors including his wife's health problems. Respondent promised to send an extensive explanation. He failed to provide the explanation. A complete copy of his client file and an explanation regarding his wife's health was requested, but not sent.

The trust account examination. The trust account of Respondent on September 27, 2018 had a balance of \$86.75. Based on the trust account review, the settlement funds of \$19,427.09 were deposited into the trust account of Respondent on September 28, 2018. Respondent earned fees of \$4,586.92. This fee was split with the former attorney who was also reimbursed costs of \$2,100.57 associated with the filing of the lawsuit. A disbursement was sent to the client for \$7,049.51. This left a balance of funds for that client of \$5,690.06 in the trust account.

Respondent began distributing these funds to himself, fraudulently, by noting these withdrawals as payment of fees on behalf of a different client. These totaled \$1,700. He purportedly paid a different client from those funds marking the withdrawal as a fee refund. He soon distributed another \$2,871.00 to himself. By June 20, 2019, the trust fund balance was \$50.81. Thereafter, he deposited into his trust account \$21,000 on behalf of a different client. From that client's trust fund account, he withdrew on June 27, 2019, \$3,500 to finally pay Dr. Watson.

The admissions. Respondent continued to fail to produce various documents requested by the State Bar. When Bar counsel asked why he had withdrawn \$5,371 of his client funds from April 2019 to June 2019, he responded, "That is the \$64,000 question, and I suspect you and Mr. Sochor know the answer to it already." [Ex. H.] On September 10, 2019, Respondent admitted he "converted client funds to my own use, in the amount of \$5,371, which I am in the process of repaying." [Ex. I.] Respondent also finally admitted he had never sent a check to Dr. Watson until the June payment taken from another client's funds.

In his response to the motion, Respondent admits converting the funds for his own use, but opposes interim suspension as he "denies that his conduct will result in substantial harm, loss or damage to the public, the legal profession, or the administration of justice." Interim suspension may be imposed based on past misconduct or on a reasonable anticipation of future misconduct. Rule 61(a) states

interim suspension may be entered if a respondent “has caused or is likely to cause” harm.

Respondent attributes his misconduct to his “lack of income,” his concern for both his wife’s and his own health concerns, and his inability to “cultivate new clients” because of these health issues. He acknowledges that the money he misappropriated from his client “was used to pay household expenses and medical bills.”

Conclusions

The challenge of desperation is not unique. It can be relentless and harsh. The circumstances that lead to desperation may never be conquered. Yet for the attorney, the determination to remain virulent despite adverse circumstance requires each lawyer to observe the ethical requirements imposed on every licensed lawyer. The adherence to the duties and obligations of the profession must remain significant in the moral ecology of the lawyer to remain licensed. The most important of these duties are the obligations a lawyer owes to clients. These duties include the duty of loyalty which encompasses the obligation to preserve the property of a client. *Standards*, p. 9.

A lawyer who converts a client’s funds breaches that duty of loyalty owed to the client. Respondent acted intentionally, and the client suffered an actual injury. Notwithstanding, it is likely that if his adverse life circumstances are substantiated,

there are various applicable mitigating factors that are likely existent. But the determining issues in this proceeding are whether there is probable cause and if there is, does it warrant suspension. Here, there is more than probable cause; there is an admission. The admissions include claimed mitigation. But even if true, that mitigation is not enough to avoid suspension, although it may avoid disbarment.

Finding and Order

IT IS ORDERED finding probable cause that Gerald L. Piccirilli engaged in conduct that has caused immediate and substantial harm to clients, and the administration of justice.

IT IS ORDERED under Rule 61, **GERALD L. PICCIRILLI, Bar No. 010093** is suspended from the practice of law effective immediately.

IT IS FURTHER ORDERED as provided in Rule 61(d), such interim suspension shall continue in force until final disposition of all pending disciplinary proceedings against Gerald L. Piccirilli, unless vacated or modified. Nothing precludes the parties from entering into a consent agreement to resolve this matter.

IT IS FURTHER ORDERED freezing all trust accounts of Gerald L. Piccirilli until further order of the PDJ. Expenditures from that account may be made by a signed agreement between the State Bar and Gerald L. Piccirilli, otherwise only by order of the PDJ.

IT IS FURTHER ORDERED under Supreme Court Rule 72(a), Gerald L. Piccirilli shall immediately notify all clients of the terms of this order within ten days of this order and shall timely file with the Disciplinary Clerk and the Supreme Court, notice of compliance with this Order as required by Rule 72(e).

IT IS FURTHER ORDERED setting a telephonic status review conference under Rule 61(c)(D), on **February 4, 2020 at 10:30 a.m.** The State Bar is reminded it must expeditiously proceed with any related disciplinary investigation and proceeding. This status review shall automatically be vacated without further order upon the filing by the State Bar of a complaint regarding this matter.

DATED this 7th day of October 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed/mailed
this 7th day of October 2019 to:

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